

46 Am. Jur. 2d Judges § 17

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Judges

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IV. Termination or Suspension of Office; Censure

B. Impeachment and Removal

§ 17. Nature of proceedings to remove judge

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West's Key Number Digest

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Before a judge may be adjudged to have forfeited the office or become disqualified from holding future office, the judge's guilt must have been adjudicated at least in a formal proceeding wherein the judge was accorded due process of law; conviction in a criminal proceeding is not necessarily required.¹ The combination of investigative and adjudicatory functions in one body during such a proceeding does not constitute a violation of due process.²

Although the constitutional remedy by impeachment does not prevent a subsequent indictment and conviction, and does not extend beyond a removal from office and a disqualification to hold office during the term for which the officer was elected or appointed, due process requires that a judge not be permanently enjoined from seeking another judgeship in the future.³

The purpose of judicial discipline is to maintain the honor and dignity of the judiciary and the proper administration of justice rather than to punish the individual.⁴ The purpose of judicial disciplinary proceedings is the preservation and enhancement of public confidence in the honor, integrity, dignity, and efficiency of the members of the judiciary and the system of justice.⁵ Because the purpose of judicial discipline proceedings is to protect the public,⁶ rather than to punish the individual judge,⁷ the proceeding is neither civil nor criminal but *sui generis*.⁸

Charges against a judge need not be established by proof beyond a reasonable doubt, but rather by a preponderance of the evidence⁹ or by clear and convincing evidence.¹⁰ For instance, a cognizable misconduct complaint, based on allegations of a judge not following prevailing law or the directions of a court of appeals in particular cases must identify clear and convincing evidence of willfulness, that is, clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on the judge's disagreement with, or willful indifference to, that law.¹¹ Before reporting findings of fact to the supreme court, the Judicial Qualifications Commission (JQC) must conclude that they are established by clear and convincing evidence;

the supreme court must then review the findings and determine whether they meet this quantum of proof, a standard which requires more proof than a "preponderance of the evidence" but less than "beyond and to the exclusion of a reasonable doubt."¹² Findings in proceedings before the JQC that meet the "clear and convincing evidence" standard are given great weight by the supreme court.¹³

CUMULATIVE SUPPLEMENT

Cases:

Neither the Judicial Standards Commission's findings of fact nor its conclusions of law are binding, but they may be adopted by the Supreme Court in a judicial disciplinary proceeding; if the Commission's findings are adequately supported by clear and convincing evidence, the Court must determine whether those findings support the Commission's conclusions of law. [In re Inquiry Concerning a Judge, No. 17-143, 827 S.E.2d 516 \(N.C. 2019\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [In re Inquiry Concerning Holien, 612 N.W.2d 789 \(Iowa 2000\)](#).
As to the determination and hearing required for disqualification of a judge in particular cases, see §§ 188 to 197.
- 2 [In re Elliston, 789 S.W.2d 469 \(Mo. 1990\)](#).
- 3 [Matter of Probert, 411 Mich. 210, 308 N.W.2d 773 \(1981\)](#).
- 4 [Matter of Henderson, 392 P.3d 56 \(Kan. 2017\)](#).
- 5 [Matter of Callaghan, 238 W. Va. 495, 796 S.E.2d 604 \(2017\)](#), petition for certiorari filed (U.S. July 10, 2017).
- 6 [In re Neely, 2017 WY 25, 390 P.3d 728 \(Wyo. 2017\)](#), petition for certiorari filed (U.S. Aug. 4, 2017).
- 7 [Re Decker, 212 So. 3d 291 \(Fla. 2017\)](#); [In re Dean, 855 N.W.2d 186 \(Iowa 2014\)](#), as amended (Dec. 11, 2014); [In re McCree, 495 Mich. 51, 845 N.W.2d 458 \(2014\)](#); [In re Balivet, 196 Vt. 425, 2014 VT 41, 98 A.3d 794 \(2014\)](#).
- 8 [In re Conduct of Pendleton, 870 N.W.2d 367 \(Minn. 2015\)](#).
- 9 [In re Noecker, 472 Mich. 1, 691 N.W.2d 440 \(2005\)](#).
- 10 [In re Doggett, 874 So. 2d 805 \(La. 2004\)](#).
- 11 [In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558 \(U.S. Jud. Conf. 2008\)](#).
- 12 [In re Allen, 998 So. 2d 557 \(Fla. 2008\)](#).
- 13 [In re Henson, 913 So. 2d 579 \(Fla. 2005\)](#).

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